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16 Attorneys for Plaintiff
 17 VESTA STRATEGIES, LLC

18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA

20 VESTA STRATEGIES, LLC,

21 CASE NO. C 07-06216 JW RS

22 Plaintiff,

AMENDED COMPLAINT

23 v.

24 ROBERT E. ESTUPINIAN, GINNY
 25 ESTUPINIAN, MUTUAL VISION, LLC,
 26 MILLENNIUM REALTY GROUP,
 27 VESTA REVERSE 100, LLC, VESTA
 28 CAPITAL ADVISORS, LLC, and
 CAROL-ANN TOGNAZZINI,

Defendants.

AMENDED COMPLAINT

29 Plaintiff, Vesta Strategies, LLC (“Vesta Strategies”), by its undersigned attorneys, states
 30 as follows for its Complaint against defendants, Robert E. Estupinian, Ginny Estupinian, Mutual
 31 Vision, LLC (“Mutual Vision”), Millennium Realty Group (“Millennium”), Vesta Reverse 100,
 32 LLC (“Vesta Reverse”), Vesta Capital Advisors, LLC (“Vesta Capital”), and Carol-Ann
 33 Tognazzini (“Tognazzini”).

NATURE OF THE ACTION

1 2. Robert Estupinian was the CEO of Vesta Strategies. Since Vesta Strategies'
2 inception, Robert Estupinian, his wife Ginny Estupinian, and his private companies have
3 systematically and habitually breached their fiduciary and other legal duties to Vesta Strategies by
4 embezzling and stealing Vesta Strategies' money and causing Vesta Strategies millions of dollars
5 of damages. Robert Estupinian's wrongful and unlawful conduct included but was not limited to:

- 7 • He stole Vesta Strategies' money to finance his and his wife's lavish lifestyle and
8 to fund his own personal business ventures.
- 9 • He stole Vesta Strategies' money to buy two dogs for \$50,000.
- 10 • He stole Vesta Strategies' money to personally rent an over \$3,000 per month
11 luxury oceanfront vacation apartment for years.
- 12 • He stole Vesta Strategies' money to throw extravagant parties for his wife.
- 13 • He stole Vesta Strategies' money to buy properties in his and his wife's name and
14 then, when the properties did not make as much money as he wanted, he deeded
15 them to Vesta Strategies.
- 16 • He stole Vesta Strategies' money to pay for his tuition to go to school for his PhD.
- 17 • He stole Vesta Strategies' money to buy his personal house.
- 18 • He stole Vesta Strategies' money to give to his parents as part of one of their real
19 estate deals.
- 20 • He stole Vesta Strategies' money to pay so-called "referral fees" to his other
21 companies and to pay commissions owed by his other companies.
- 22 • He stole Vesta Strategies' money to pay purported Vesta Strategies employees
23 who did no work for Vesta Strategies.

24 2. Vesta Strategies' 51% majority member and manager only recently learned about
25 Robert Estupinian's embezzlement, misappropriation, and misuse of Vesta Strategies' money.
26 That is because Robert Estupinian affirmatively and fraudulently hid what he was doing and
27 directed other Vesta Strategies' employees to mislead Vesta Strategies' controlling member and
28 manager, falsify records, and mischaracterize transactions to hide Robert Estupinian's theft.

1 3. Vesta Strategies brings this action against Robert Estupinian, his wife, his other
2 companies, and other individuals who have benefited from Robert Estupinian's theft and who
3 have wrongfully and unjustly received Vesta Strategies' money. Vesta Strategies seeks to
4 expeditiously recover the millions of dollars that have been wrongfully taken from it.

JURISDICTION AND VENUE

6 4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 28
7 U.S.C. § 1367, and 18 U.S.C. § 1964.

8 5. Venue is proper in this district pursuant to 28 U.S.C. § 1331(a) in that a substantial
9 portion of the events giving rise to this action occurred in San Jose, Santa Clara County,
10 California..

JURY DEMAND

12 || 6. Vesta Strategies demands a trial by jury.

PARTIES

14 7. Plaintiff Vesta Strategies is a California limited liability company. Vesta
15 Strategies' offices are located at 150 Almaden Boulevard, Suite 1375, San Jose, California.

16 8. Defendant Mutual Vision is a 49% minority member of Vesta Strategies. Upon
17 information and belief, Mutual Vision's members are defendants Robert and Ginny Estupinian.
18 Mutual Vision is located in Campbell, California.

19 9. Defendant Robert Estupinian is the former CEO of Vesta Strategies. Robert
20 Estupinian received an annual salary from Vesta Strategies of \$250,000. Robert Estupinian has
21 numerous degrees, including a BA (Bachelor of Arts), MBA (Masters of Business
22 Administration), and JD (Juris Doctor). He also has numerous professional designations,
23 including as a RFC (Registered Financial Consultant), GRI (Graduate Realtor Institute), and CRS
24 (Certified Residential Specialist). Moreover, he holds numerous licenses, including a Real Estate
25 broker license, an Insurance broker license, and a Registered Representative of Securities – Series
26 22, 6, 63 and Variable Contracts. Robert Estupinian resides in San Jose, California.

27 10. Defendant Ginny Estupinian is Robert Estupinian's wife. Ginny Estupinian is a
28 former employee of Vesta Strategies. Despite performing little work for Vesta Strategies, Ginny

1 Estupinian received an annual salary from Vesta Strategies of \$96,000. Upon information and
2 belief, Ginny Estupinian has a Bachelors degree in Business Administration and is in the process
3 of obtaining a PhD in psychology. Ginny Estupinian resides in San Jose, California.

4 11. Defendant Millennium is an investment property brokerage company that is, upon
5 information and belief, owned and operated by Robert Estupinian. Millennium is located in San
6 Jose, California.

7 12. Defendant Vesta Reverse is a limited liability company in which Mutual Vision is
8 the majority member. Vesta Reverse is operated by Robert Estupinian. Vesta Reverse was used
9 to funnel money out of Vesta Strategies for the personal benefit of Robert and Ginny Estupinian.
10 Vesta Reverse is located in San Jose, California.

11 13. Defendant Vesta Capital is a limited liability company that is operated by Robert
12 Estupinian. Vesta Capital was used to funnel money out of Vesta Strategies to make investments
13 to benefit Robert and Ginny Estupinian. Vesta Capital is located in San Jose, California.

14 14. Defendant Tognazzini is a close personal friend of Ginny Estupinian. Tognazzini
15 has been on Vesta Strategies' payroll since December, 2006 under Robert Estupinian's direction,
16 but Tognazzini did not do any work for Vesta Strategies. Instead, upon information and belief,
17 she was on Vesta Strategies' payroll solely to allow her to state that she was employed and had
18 income in order qualify for a loan to purchase a house. Upon information and belief, Tognazzini
19 resides in Rio Linda, California.

20 **OPERATIVE FACTS APPLICABLE TO ALL COUNTS**

21 15. Vesta Strategies was formed on January 9, 2004. Vesta Strategies is a qualified
22 intermediary for Section 1031 tax-deferred real estate exchanges. In essence, a qualified
23 intermediary for Section 1031 exchanges works with persons owning investment properties to
24 help them complete their Section 1031 exchange. In performing its services, a qualified
25 intermediary collects deposits from its customers and, at the appropriate time, has an obligation to
26 pay those funds out to the customer.

1 16. Mutual Vision has been the minority member of Vesta Strategies at all relevant
 2 times. Robert Estupinian is the President of Mutual Vision. He and his wife Ginny Estupinian
 3 are, upon information and belief, the only members of Mutual Vision.

4 **The Estupinians Funded Their Lavish Lifestyle from Vesta Strategies' Bank Account**

5 17. Robert Estupinian was the CEO of Vesta Strategies. Instead of acting in Vesta
 6 Strategies' best interests, Robert Estupinian used and abused his position to fund his and his
 7 wife's extravagant lifestyle. Indeed, Robert and Ginny Estupinian treated Vesta Strategies as
 8 their own personal bank account.

9 **Robert Estupinian Used Vesta Strategies Funds to Buy Two Dogs for \$50,000.**

10 18. From August, 2006 through June, 2007, Robert Estupinian caused \$170,000 to be
 11 transferred from Vesta Strategies to Mutual Vision (the minority member in Vesta Strategies).
 12 He used the money in two ways. He spent \$50,000.00 on two dogs. And he put \$118,000 into
 13 his and his wife's personal bank account.

14 19. Mutual Vision, Robert Estupinian, and Ginny Estupinian have never paid that
 15 \$170,000 or any interest back to Vesta Strategies.

16 20. Notwithstanding the fact that Vesta Strategies' manager and majority member did
 17 not know about it, did not approve it, and never would have approved it, Robert Estupinian
 18 bought dogs and took money for his own personal account. The dogs and Robert Estupinian's
 19 bank account have no legitimate connection to Vesta Strategies' business.

20 **The Estupinians Used Vesta Strategies Funds to Buy Their House.**

21 21. On June 7, 2004, Robert Estupinian took \$1,256,150 out of Vesta Strategies. One
 22 week later, on June 14, 2004, he used that money to buy his house, with cash at closing, for
 23 \$1,295,000. Amazingly, the Estupinians then used their personal company Millennium as their
 24 purported agent on the transaction and collected \$38,850 as a commission for the transaction. In
 25 other words, the Estupinians bought a \$1.3 million house without paying a dime. In fact, the
 26 Estupinians actually *made* money on their purchase of their million-dollar house.

27 22. Mutual Vision, Robert Estupinian, and Ginny Estupinian have not paid all of this
 28 \$1,256,150 back to Vesta Strategies and have not paid any interest on that money.

1 23. Robert Estupinian affirmatively hid the purpose for which the \$1,256,150 was
2 being transferred out of Vesta Strategies.

3 24. Notwithstanding the fact that Vesta Strategies' manager and majority member did
4 not know about it, did not approve it, and never would have approved it, the Estupinians bought a
5 house with Vesta Strategies' money. The Estupinians' house has no legitimate connection to
6 Vesta Strategies' business.

7 **The Estupinians Used Vesta Strategies Funds to Rent a Luxury Apartment.**

8 25. Since 2004, the Estupinians have also rented a luxury, oceanfront apartment in
9 Long Beach, California. The rent for that luxury apartment has ranged from \$3,050 to \$3,379 per
10 month. Despite how expensive it is, Robert and Ginny Estupinian have, on information and
11 belief, spent a maximum of several weeks per year at that apartment. Vesta Strategies has paid
12 for the rent, furniture, and utilities (including electricity, gas, water, satellite television, and
13 cleaning services) for Robert and Ginny Estupinian's personal, luxury, beachfront apartment.
14 Specifically, Vesta Strategies has paid over \$160,308 in rent, furnishings, and utilities for that
15 apartment.

16 26. Robert and Ginny Estupinian have never paid that money back to Vesta Strategies.

17 27. The Estupinians lied to Vesta Strategies and its controlling member and manager
18 about the purpose for this rent. Indeed, Robert Estupinian submitted expense reports for
19 apartment expenses under the guise that they were for the "Long Beach Office," which did not
20 exist.

21 28. Notwithstanding the fact that Vesta Strategies' manager and majority member did
22 not know about it, did not approve it, and never would have approved it, the Estupinians have
23 personally rented a luxury vacation apartment using Vesta Strategies' money. The Estupinians'
24 luxury apartment has no legitimate connection to Vesta Strategies' business.

25 **Robert Estupinian Used Vesta Strategies Funds to Go to School.**

26 29. From 2005 through 2007, Robert Estupinian has attended Walden University to
27 seek his PhD. He used Vesta Strategies to pay his tuition and other costs. Specifically, Vesta
28 Strategies has paid \$42,795 for Robert Estupinian to go to Walden University.

1 30. Robert Estupinian has never paid any of the money that he used for his school
 2 tuition and costs back to Vesta Strategies.

3 31. Notwithstanding the fact that Vesta Strategies' manager and majority member did
 4 not know about it, did not approve it, and never would have approved it, Robert Estupinian went
 5 to school on Vesta Strategies' money. Robert Estupinian's schooling had no legitimate
 6 connection to Vesta Strategies' business.

7 **The Estupinians Used Vesta Strategies Funds to Throw Extravagant Parties.**

8 32. Robert Estupinian threw extravagant parties, including birthday parties for his
 9 wife. The Estupinian's invited their friends and family to the swanky Fairmont Sonoma Mission
 10 Inn and Spa for the weekend. The Estupinians would treat their friends to fancy lodging, dinners,
 11 spa treatments, and other events. The Estupinians and their friends would run up a tab of
 12 thousands of dollars, which Robert Estupinian would pick up. The reason that Robert Estupinian
 13 was such a big spender is clear: he was not spending his own money. He was spending Vesta
 14 Strategies' money. Vesta Strategies paid for these lavish parties, to the tune of over \$9,313.
 15 Robert and Ginny Estupinian have never paid that money back to Vesta Strategies.

16 33. Notwithstanding the fact that Vesta Strategies' manager and majority member did
 17 not know about it, did not approve it, and never would have approved it, Robert Estupinian threw
 18 personal parties using Vesta Strategies' money. The Estupinian's personal parties with their
 19 friends and family had no legitimate connection to Vesta Strategies' business.

20 **Robert Estupinian Used Vesta Strategies to Pay Sham Payroll to Ginny Estupinian's Friend**

21 34. Instead of acting in Vesta Strategies' best interests, Robert Estupinian used and
 22 abused his position to pay money to his wife's friend with no return benefit to Vesta Strategies.
 23 This particular scam involved the Estupinians' efforts to help their friend trick lenders into
 24 believing that she had an employment history and income so that she could get a loan.

25 35. On December 21, 2006, Robert Estupinian put Tognazzini (Ginny Estupinian's
 26 friend) on Vesta Strategies' payroll. Tognazzini was paid an annual salary of \$36,480. However,
 27 Vesta Strategies is not aware of *any* work that Tognazzini did for Vesta Strategies. To the extent
 28 that she did anything for Vesta Strategies, it certainly did not justify her salary.

1 36. Upon information and belief, prior to her purported employment with Vesta
 2 Strategies, Tognazzini was unemployed.

3 37. Upon information and belief, Tognazzini has been in the market to purchase a
 4 house. If she was unemployed, and did not have any income, then Tognazzini would not have
 5 qualified for a loan to purchase a house. Upon information and belief, Robert Estupinian put
 6 Tognazzini on the Vesta Strategies payroll and paid her income solely so that Tognazzini could
 7 show lenders that she was employed and qualify for a loan.

8 38. Tognazzini's alleged employment with Vesta Strategies was nothing more than a
 9 sham to trick mortgage companies into believing that she was employed and had a steady stream
 10 of income.

11 39. In addition to helping their friend defraud banks, the Estupinians also had a selfish
 12 interest in Tognazzini qualifying for a mortgage to purchase a house. Indeed, upon information
 13 and belief, the Estupinians expected to serve as agents or brokers for Tognazzini's home purchase
 14 and to pocket a significant commission as a result.

15 40. Notwithstanding the fact that Vesta Strategies' manager and majority member did
 16 not know about it, did not approve it, and never would have approved it, Robert Estupinian
 17 caused Vesta Strategies to pay a significant salary to a person who did no work for Vesta
 18 Strategies.

19 Robert Estupinian Paid Other People from Vesta Strategies for Non-Vesta Work

20 41. Instead of acting in Vesta Strategies' best interests, Robert Estupinian used and
 21 abused his position to pay substantial amounts of money to individuals who were not doing
 22 significant work for Vesta Strategies.

23 42. For example, Bill Kraft, Brad Hensley, and David Carter worked directly for
 24 Robert Estupinian or for one of Estupinian's other companies, including Millennium. In that
 25 capacity, those individuals performed real estate sales and broker services.

26 43. Vesta Strategies is a company that acts as a qualified intermediary for Section
 27 1031 real estate exchanges.

1 44. Bill Kraft, Brad Hensley, and David Carter have spent the vast majority of their
2 time assisting Robert Estupinian with his business of selling tenant in common interests in real
3 estate, rather than working for Vesta Strategies in its qualified intermediary business.

4 45. However, despite the fact that they spent the majority of their time doing business
5 other than Vesta Strategies business, Robert Estupinian used Vesta Strategies to pay Bill Kraft,
6 Brad Hensley, and David Carter. At Robert Estupinian's direction, Vesta Strategies paid
7 significant wages to those individuals, when those wages should have been paid by Robert
8 Estupinian's other companies.

9 46. Notwithstanding the fact that Vesta Strategies' manager and majority member did
10 not know about it, did not approve it, and never would have approved it, Robert Estupinian
11 Robert Estupinian used Vesta Strategies to make payroll payments to individuals who were in
12 reality working directly for him or his other companies and who were not performing significant
13 services for Vesta Strategies.

14 **Robert Estupinian Used Vesta Strategies to Further His Wife's Education and Career**

15 47. Instead of acting in Vesta Strategies' best interests, Robert Estupinian used and
16 abused his position to cause Vesta Strategies to pay money to support Ginny Estupinian's
17 psychology education and career.

18 48. For example, at Robert Estupinian's direction, the so-called Vesta Strategies
19 Foundation made a \$6,000 grant to a psychology research group in order to conduct a certain
20 psychology study. That grant was made using Vesta Strategies' money. Ginny Estupinian served
21 as the project coordinator for that study.

22 49. Notwithstanding the fact that Vesta Strategies' manager and majority member did
23 not know about it, did not approve it, and never would have approved it, Robert Estupinian
24 funded a psychology study. That psychology study had no relation to, and provided no benefit to,
25 Vesta Strategies' real estate business.

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1 **Robert Estupinian Used Vesta Strategies to Pay Obligations of His Personal Companies**

2 50. Instead of acting in Vesta Strategies' best interests, Robert Estupinian used and
3 abused his position to cause Vesta Strategies to pay obligations owed by Millennium, not Vesta
4 Strategies.

5 51. Robert Estupinian owned and operated Millennium, a company that performs real
6 estate brokerage and investments services. Unlike Vesta Strategies, Millennium is not a Section
7 1031 qualified intermediary.

8 52. Robert Estupinian used Vesta Strategies funds to pay the commissions that
9 Millennium owed to its sales people. Specifically, Robert Estupinian caused Vesta Strategies to
10 pay at least the following commissions that Millennium was obligated to pay:

11 (1) \$14,000 on March 15, 2005 for a Real Estate Commission; (2) \$16,000 on December 15, 2006
12 for a Securities Commission; (3) \$14,160 on December 15, 2006 for a Securities Commission; (4)
13 \$5,000 on June 15, 2007 for a Real Estate Commission; (5) \$5,000 on July 15, 2007 for a Real
14 Estate Commission; (6) \$5,000 on August 15, 2007 for a Real Estate Commission; and (7) \$5,000
15 on August 15, 2007 for a Securities Commission. Therefore, at Robert Estupinian's direction,
16 Vesta Strategies is out \$64,160 for commissions that had nothing to do with Vesta Strategies.
17 Meanwhile, Robert Estupinian's other company, Millennium, kept 100% of the commission that
18 it collected for the transactions.

19 53. Similarly, Robert Estupinian caused Vesta Strategies to pay Brad Hensley at least
20 \$5,000 on August 15, 2006 and \$14,160 on December 15, 2006 as alleged Securities
21 Commissions. Again, these commissions related to transactions that had nothing to do with Vesta
22 Strategies' qualified intermediary business. Therefore, at Robert Estupinian's direction, Vesta
23 Strategies is out \$19,160 for commissions paid to Brad Hensley that had nothing to do with Vesta
24 Strategies.

25 54. Vesta Strategies did not owe Millennium's commissions and those commissions
26 should not have been paid by Vesta Strategies.

1 55. Millennium and Robert Estupinian have never paid any money back to Vesta
2 Strategies that was paid by Vesta Strategies for commissions owed by Millennium or Robert
3 Estupinian.

4 56. Notwithstanding the fact that Vesta Strategies' manager and majority member did
5 not know about it, did not approve it, and never would have approved it, Robert Estupinian paid
6 the debts of his personal companies using Vesta Strategies funds. Those payments had no
7 legitimate connection to Vesta Strategies' business.

8 **Robert Estupinian Caused Vesta Strategies to Pay Phony Fees to His Other Companies**

9 57. Instead of acting in Vesta Strategies' best interests, Robert Estupinian used and
10 abused his position to cause Vesta Strategies to pay phony "referral fees" to his other companies.

11 58. Indeed, at Robert Estupinian's direction, Vesta Strategies has paid \$630,100 in so-
12 called referral fees to Millennium. However, Millennium did not refer anything to Vesta
13 Strategies or perform any other services to earn that \$630,100. The referral fees were phony.
14 They were simply a disguise to shuttle money from Vesta Strategies to Millennium at Robert
15 Estupinian's whim.

16 59. Robert Estupinian and Millennium were not entitled to the \$630,100 paid to them
17 by Vesta Strategies. However, they have never returned that money to Vesta Strategies.

18 60. Robert Estupinian hid these phony referral fees by falsifying financial records to
19 show income that did not exist to cover these expenses.

20 61. Notwithstanding the fact that Vesta Strategies' manager and majority member did
21 not know about it, did not approve it, and never would have approved it, Robert Estupinian paid
22 referral fees to Millennium that Vesta Strategies did not owe. Those payments had no legitimate
23 connection to Vesta Strategies' business.

24 **Robert Estupinian Used Vesta Strategies' Money to Make His Own Investments**

25 62. Instead of acting in Vesta Strategies' best interests, Robert Estupinian used and
26 abused his position to use Vesta Strategies' money to make his own personal investments,
27 investments for his family, and investments for his other business.

1 **The Estupinians Buy Personal Real Estate Investments with Vesta Strategies Funds.**

2 63. Vesta Reverse 100, LLC (a company set up by Robert Estupinian) borrowed
 3 \$750,000 from Vesta Strategies. Robert Estupinian used that money to purchase vacant lots in
 4 South Carolina (Lots 683, 687, 688). However, he did not purchase those lots for Vesta
 5 Strategies. Indeed, Vesta Strategies is a Section 1031 exchange business, it is not a real estate
 6 investment business. Rather, he purchased them for himself and his wife.

7 64. Specifically, the Settlement Statements confirm that Robert and Ginny Estupinian
 8 personally purchased Lots 683, 687, and 688 for \$230,000, \$260,000, and \$260,000, respectively,
 9 on or about September 20, 2005.

10 65. Ultimately, when that speculative investment apparently did not work out as he
 11 had hoped, Robert Estupinian then transferred the deeds of the properties to Vesta Strategies.
 12 Simply put, Robert Estupinian and Ginny Estupinian used Vesta Strategies to fund their
 13 speculative real estate investment and then, when they did not make the Estupinians as much
 14 money as they hoped, dumped the properties on Vesta Strategies to deal with.

15 **Robert Estupinian Gave Vesta Strategies Funds to His Parents.**

16 66. On October 4, 2007, Mutual Vision (Vesta Strategies' minority member)
 17 transferred \$43,369.30 to a title company for a transaction involving Robert Estupinian's parents,
 18 Edmundo and Haydee Estupinian. Upon information and belief, Mutual Vision's sole or primary
 19 source of revenue is Vesta Strategies. Based on that fact, and on Mutual Vision's and the
 20 Estupinians' pattern of using Vesta Strategies' money to pay for things, Vesta Strategies believes
 21 that the \$43,369.30 is Vesta Strategies funds.

22 67. Robert Estupinian's parents had nothing to do with Vesta Strategies, and certainly
 23 did not provide any benefit to Vesta Strategies. Yet, upon information and belief, Robert
 24 Estupinian caused Vesta Strategies to give them \$43,369.30.

25 **Robert Estupinian Used Vesta Strategies Funds to Make High-Risk Mezzanine Loans.**

26 68. Since its formation, through his personal companies, Robert Estupinian has also
 27 borrowed over \$12 million from Vesta Strategies. Robert Estupinian used Vesta Strategies'
 28 money to make his own investments or investments for his other companies.

1 69. This was the scam: Robert Estupinian “borrows” money from Vesta Strategies at
2 a low interest rate. He then puts that money into an investment yielding a higher rate of return –
3 typically high-risk mezzanine financing at over 10% interest – on his own behalf (or using one of
4 his other companies). He then pays the principal back to Vesta Strategies, and pockets the
5 substantial interest spread. So Robert Estupinian gets all of the benefit of the money (the
6 interest), while bearing none of the risk because he is using Vesta Strategies’ money.

7 70. Upon information and belief, Robert Estupinian has wrongfully and improperly
8 received approximately \$250,000 to \$300,000 in interest per year for at least three years using
9 Vesta Strategies’ money. Vesta Strategies was entitled to the use of its money, and the time value
10 of that money, during that period of time.

11 **Robert Estupinian Submitted Improper Expense Reports to Vesta Strategies**

12 71. Instead of acting in Vesta Strategies’ best interests, Robert Estupinian used and
13 abused his position to submit and collect upon improper expense reports to Vesta Strategies. He
14 expensed costs that had nothing whatsoever to do with Vesta Strategies’ business, but rather were
15 Robert Estupinian’s personal costs or costs incurred in operating his other businesses.

16 72. The following are just a few among many egregious examples of improper items
17 that Robert Estupinian expensed through Vesta Strategies:

- 18 • Materials for a “Life Marketing Package” that had nothing whatsoever to
19 do with Vesta Strategies’ business;
- 20 • A subscription to Rob Minton’s Monthly Income for Life newsletters,
21 which was wholly unrelated to Vesta Strategies’ business;
- 22 • Materials to develop a membership style website that was wholly unrelated
23 to Vesta Strategies’ business;
- 24 • Marketing expenses that had nothing whatsoever to do with Vesta
25 Strategies’ business;
- 26 • Real estate and securities memberships that had nothing whatsoever to do
27 with Vesta Strategies’ business;
- 28 • Subscriptions to entrepreneurial organizations that had nothing to do with
Vesta Strategies’ business; and
- Personal meetings and dinners, including frequent dinners with his wife
and dinners or meetings that did not occur at all.

73. Robert Estupinian collected improper expense payments from Vesta Strategies in
an amount exceeding \$432,776.

3 74. Robert Estupinian affirmatively hid the true nature of these expenses in his
4 expense reports, including for example by submitting expense reports for dinners with his wife
5 using her maiden name (Hillig) rather than her married name (Estupinian).

**COUNT I – RICO UNDER 18 U.S.C. § 1962(c)
Against Robert Estupinian and Ginny Estupinian**

8 75. Vesta Strategies incorporates the allegations of paragraphs 1 through 74 above as
9 if fully set forth in this paragraph.

10 76. This cause of action is brought under RICO Section 1962(c). RICO Section
11 1962(c) prohibits a person from managing or operating an enterprise through a pattern of
12 racketeering activity (such as mail fraud, wire fraud, bank fraud, interstate transportation of stolen
13 property, etc.).

14 77. Mutual Vision is an “enterprise” as that term is defined in 18 U.S.C. § 1961(4).
15 Mutual Vision was engaged in interstate commerce and its activities affected interstate commerce
16 at all relevant times.

17 78. Robert Estupinian and Ginny Estupinian are “persons” as that term is defined in 18
18 U.S.C. § 1961(3) and were members of, employed by, and/or associated with Mutual Vision at all
19 relevant times. As its members and officers, Robert and Ginny Estupinian operate or manage
20 Mutual Vision.

21 79. Over the course of several years, from 2004 through 2007, Robert and Ginny
22 Estupinian agreed to and did conduct and participate, directly or indirectly, in the conduct of
23 Mutual Vision's affairs through a continuous pattern of racketeering activity. That pattern of
24 racketeering activity included wire fraud, bank fraud, and transportation of stolen property in
25 interstate commerce. Through that pattern of racketeering activity, Robert Estupinian and Ginny
26 Estupinian executed and covered up a scheme to defraud Vesta Strategies. The affairs of Mutual
27 Vision, as conducted and participated in by Robert and Ginny Estupinian, constitute a "pattern of
28 racketeering activity" as that phrase is used in 18 U.S.C. § 1962(c).

1 80. In furtherance of their scheme and artifice to defraud, Mutual Vision, Robert
2 Estupinian, and Ginny Estupinian transported (or caused to be transported) in interstate commerce
3 property that they knew was stolen or obtained by fraud. Specifically, the Vesta Strategies funds
4 that Robert and Ginny Estupinian (through Mutual Vision) stole or fraudulently obtained were
5 sent across state lines from one bank to another. For example:

6 • On September 13, 2005, in three separate transactions, Robert and Ginny
7 Estupinian used over \$700,000 of money that was stolen or fraudulently obtained
8 from Vesta Strategies to purchase three lots in South Carolina. The place of
settlement for those purchases was in Bluffton, South Carolina, but the money
used for the purchase came from California.

9 • On August 7, 2006 and August 21, 2006, \$27,760 and \$22,458 (respectively) of
10 money that was stolen or fraudulently obtained from Vesta Strategies was wired
from Mutual Vision's account at the San Jose National Bank in San Jose,
California to Wachovia Bank of South Carolina in Aiken, South Carolina.

12 The transportation of stolen or fraudulently obtained funds in interstate commerce constitutes
13 predicate acts pursuant to 18 U.S.C. § 2314.

14 81. In furtherance of their scheme and artifice to defraud, Mutual Vision, Robert
15 Estupinian, and Ginny Estupinian electronically wired money across state lines (including but not
16 limited to the wires listed in the preceding paragraph). In addition, the Estupinians caused e-
17 mails to be sent from California to Illinois in order to further and cover up their scheme to
18 defraud, including a June 7, 2004 e-mail to the office of the manager and majority member falsely
19 stating where the \$1,256,150 that the Estupinians used to buy their house was being transferred
20 to. These wires constitute predicate acts of wire fraud pursuant to 18 U.S.C. § 1343.

21 82. In furtherance of their scheme and artifice to defraud, Mutual Vision, Robert
22 Estupinian, and Ginny Estupinian have also engaged in bank fraud. Specifically, Robert and
23 Ginny Estupinian used Mutual Vision's minority membership in Vesta Strategies and Robert
24 Estupinian's resulting position as CEO of Vesta Strategies to pay Tognazzini a salary from Vesta
25 Strategies even though she did not perform any work for Vesta Strategies. The purpose of paying
26 Tognazzini this unearned salary for a one year period of time was, upon information and belief,
27 so that Tognazzini could claim to be employed and to have an income when she applied for
28 mortgage loans. In addition, as alleged above, Robert and Ginny Estupinian used Mutual Vision

1 to obtain Vesta Strategies' moneys and funds through false and fraudulent pretenses or
 2 representations. Vesta Strategies' moneys and funds were under the custody or control of a
 3 financial institution at the time that they were wrongfully obtained. These acts of bank fraud
 4 constitute predicate acts pursuant to 18 U.S.C. § 1344.

5 83. Robert and Ginny Estupinian's violations of 18 U.S.C. § 1962 have directly and
 6 proximately caused Vesta Strategies damages in its business and property.

7 WHEREFORE, Vesta Strategies respectfully requests that this Court enter judgment on
 8 Count I in its favor and against Robert Estupinian and Ginny Estupinian, and award Vesta
 9 Strategies the following relief:

- 10 (1) money damages in the amount proximately caused by Robert Estupinian
 and Ginny Estupinian's RICO violations;
- 11 (2) treble damages pursuant to 18 U.S.C. § 1964(c);
- 12 (3) reasonable attorneys' fees and costs; and
- 13 (4) such further or different relief as this Court deems appropriate.

14 **COUNT II – RICO CONSPIRACY UNDER 18 U.S.C. § 1962(d)**
 15 **Against Robert Estupinian, Ginny Estupinian,
 Mutual Vision, Millennium, Tognazzini, Vesta Reverse, and Vesta Capital**

17 84. Vesta Strategies incorporates the allegations of paragraphs 1 through 83 above as
 18 if fully set forth in this paragraph.

19 85. This cause of action is brought under RICO Section 1962(d). A RICO Section
 20 1962(c) claim is broad, but a RICO conspiracy claim under Section 1962(d) is even broader.
 21 Anyone who agrees or conspires to pursue the same criminal objective can be held liable for a
 22 RICO violation under Section 1962(d).

23 86. At least Robert Estupinian, Ginny Estupinian, Mutual Vision, Millennium,
 24 Tognazzini, Vesta Reverse, and Vesta Capital agreed and conspired to violate 18 U.S.C. §
 25 1962(c). In addition, Vesta Strategies continues to investigate whether other individuals
 26 participated in the RICO conspiracy.

27 87. Each of the conspirators agreed to conduct and participate in, or to knowingly
 28 facilitate operation or management of, Mutual Vision's affairs as part of a scheme or artifice to

1 defraud Vesta Strategies. Each of the conspirators knew that the predicate acts described above
2 would be used in furtherance of their scheme or artifice to defraud.

3 88. The conspirators' violations of 18 U.S.C. § 1962(d) have directly and proximately
4 caused Vesta Strategies damages in its business and property.

5 WHEREFORE, Vesta Strategies respectfully requests that this Court enter judgment on
6 Count II in its favor and against Robert Estupinian, Ginny Estupinian, Mutual Vision,
7 Millennium, Tognazzini, Vesta Reverse, and Vesta Capital, and award Vesta Strategies the
8 following relief:

COUNT III – INJUNCTIVE RELIEF
Against Robert Estupinian, Ginny Estupinian, and Mutual Vision

16 89. Vesta Strategies incorporates the allegations of paragraphs 1 through 88 above as
17 if fully set forth in this paragraph.

18 90. Vesta Strategies has suffered and will continue to suffer irreparable injury as a
19 result of Defendants' wrongful conduct, unless the Defendants are enjoined and the assets of at
20 least Robert Estupinian, Ginny Estupinian, and Mutual Vision are frozen pending final resolution
21 of this matter. That irreparable harm is continuing.

22 91. Vesta Strategies does not have an adequate remedy at law for Defendants'
23 wrongful conduct.

24 92. Vesta Strategies has a clear legal right to relief and a substantial likelihood of
25 success on the merits because the Defendants have repeatedly and blatantly violated their
26 fiduciary and other legal duties to Vesta Strategies.

27 93. The significant and irreparable harm to Vesta Strategies should an injunction not
28 issue outweighs any possible harm to the Defendants should an injunction be issued.

1 94. The granting of the injunctive relief sought by Vesta Strategies will serve, not
2 disserve, the public interest.

3 WHEREFORE, Vesta Strategies respectfully requests that this Court enter judgment on
4 Count III in its favor and against Robert Estupinian, Ginny Estupinian, and Mutual Vision, and
5 award Vesta Strategies the following relief:

- (1) Enter a preliminary and permanent injunction freezing the assets of Robert Estupinian, Ginny Estupinian, and Mutual Vision;
- (2) reasonable attorneys' fees and costs; and
- (3) such further or different relief as this Court deems appropriate.

COUNT IV – CONVERSION
Against Robert Estupinian, Ginny Estupinian,
Mutual Vision, Millennium, Vesta Reverse, and Vesta Capital

12 95. Vesta Strategies incorporates the allegations of paragraphs 1 through 94 above as
13 if fully set forth in this paragraph.

14 96. As alleged above, Robert Estupinian, Ginny Estupinian, Mutual Vision,
15 Millennium, Vesta Reverse, and Vesta Capital misappropriated substantial monies from Vesta
16 Strategies.

17 97. Vesta Strategies was the rightful owner, and had the right to immediate possession,
18 of its funds.

19 98. Robert Estupinian, Ginny Estupinian, Mutual Vision, Millennium, Vesta Reverse,
20 and Vesta Capital were not authorized to misappropriate and steal Vesta Strategies funds. By
21 taking or accepting Vesta Strategies' funds without authorization, Robert Estupinian, Ginny
22 Estupinian, Mutual Vision, Millennium, Vesta Reverse, and Vesta Capital wrongfully exercised
23 dominion or control over Vesta Strategies' personal property.

24 99. Vesta Strategies has demanded that Robert Estupinian, Ginny Estupinian, Mutual
25 Vision, Millennium, Vesta Reverse, and Vesta Capital immediately return the converted property.
26 However, those defendants have refused to return the converted property and have not in fact
27 returned that property to Vesta Strategies.

1 100. The conversion of Vesta Strategies' personal property has directly and proximately
 2 resulted in substantial damages to Vesta Strategies.

3 WHEREFORE, Vesta Strategies respectfully requests that this Court enter judgment on
 4 Count IV in its favor and against Robert Estupinian, Ginny Estupinian, Mutual Vision,
 5 Millennium, Vesta Reverse, and Vesta Capital and award Vesta Strategies the following relief:

- 6 (1) money damages in the amount converted by Robert Estupinian, Ginny
 Estupinian, Mutual Vision, Millennium, Vesta Reverse, and Vesta Capital;
- 7 (2) punitive damages;
- 8 (3) reasonable attorneys' fees and costs; and
- 9 (4) such further or different relief as this Court deems appropriate.

10 **COUNT V – BREACH OF FIDUCIARY DUTY**
 11 Against Robert Estupinian, Ginny Estupinian, and Mutual Vision

12 101. Vesta Strategies incorporates the allegations of paragraphs 1 through 100 above as
 13 if fully set forth in this paragraph.

14 102. As the CEO of Vesta Strategies, Robert Estupinian owed fiduciary duties to Vesta
 15 Strategies and its majority member. Robert Estupinian's fiduciary duties included, but were not
 16 limited to: the duty not to exploit his position with Vesta Strategies for his own personal benefit;
 17 the duty to protect Vesta Strategies' and its depositors money; the duty to use Vesta Strategies'
 18 money for true Vesta Strategies business; the duty of candor with respect to what Vesta
 19 Strategies' money was being spent for; a duty to provide a complete, timely, and detailed
 20 accounting to Vesta Strategies of the uses and disposition of Vesta Strategies' money; and the
 21 duty to otherwise deal fairly with Vesta Strategies and act in Vesta Strategies' best interests.

22 103. As alleged above, Robert Estupinian actively exploited his fiduciary position
 23 within Vesta Strategies to advance his personal interests at Vesta Strategies' direct expense. For
 24 example, Robert Estupinian breached his fiduciary duties through, among other ways, any or all
 25 of the following actions:

- 26 A. Using Vesta Strategies' money to finance his lavish and extravagant
 lifestyle;
- 27 B. Using Vesta Strategies' money to pay Robert and Ginny Estupinian's

friends and family members money that they did not earn;

C. Using Vesta Strategies' money to pay for psychological studies to aid Ginny Estupinian's career;

D. Using Vesta Strategies' money to pay obligations of Robert Estupinian's other companies;

E. Using Vesta Strategies' money to pay phony referral fees to Millennium;

F. Using Vesta Strategies' money to make investments on his own behalf;

G. Submitting and collecting upon expense reports for expenses incurred for non-Vesta Strategies business; and

H. Continuing to accept a salary from Vesta Strategies during times when he was no longer acting in the best interests of Vesta Strategies.

104. As an employee of Vesta Strategies, who along with her husband the CEO

participated in managing Vesta Strategies' affairs, Ginny Estupinian owed fiduciary duties to Vesta Strategies not to take active steps to harm Vesta Strategies.

105. Ginny Estupinian actively harmed Vesta Strategies. For example, Ginny

Estupinian breached her fiduciary duties to Vesta Strategies through, among other ways, any or all of the following actions:

A. Using Vesta Strategies' money to finance her lavish and extravagant lifestyle;

B. Accepting payroll payments that she had not earned because she was not performing any significant work for Vesta Strategies; and

C. Participating in her husband's numerous breaches of his fiduciary duties, as alleged above.

106. Robert and Ginny Estupinian's numerous breaches of their fiduciary duties has directly and proximately caused millions of dollars of damages to Vesta Strategies

107. Mutual Vision has at all relevant times been the minority member of Vesta Strategies. As a member, whose member was the CEO of Vesta Strategies, Mutual Vision owed fiduciary duties to Vesta Strategies and its other member.

1 108. Mutual Vision breached its fiduciary duties to Vesta Strategies through, among
 2 other ways, wrongfully taking money out of Vesta Strategies.

3 109. Mutual Vision's numerous breaches of its fiduciary duties has directly and
 4 proximately caused millions of dollars of damages to Vesta Strategies.

5 WHEREFORE, Vesta Strategies respectfully requests that this Court enter judgment on
 6 Count V in its favor and against Robert Estupinian, Ginny Estupinian, and Mutual Vision, and
 7 award Vesta Strategies the following relief:

- 8 (1) money damages in the amount proximately caused by Robert Estupinian,
 Ginny Estupinian, and Mutual Vision;
- 9 (2) punitive damages;
- 10 (3) reasonable attorneys' fees and costs; and
- 11 (4) such further or different relief as this Court deems appropriate.

12 **COUNT VI – FRAUD**
 13 Against Robert Estupinian, Ginny Estupinian, and Mutual Vision

14 110. Vesta Strategies incorporates the allegations of paragraphs 1 through 109 above as
 15 if fully set forth in this paragraph.

16 111. As part of their scheme to defraud Vesta Strategies, Robert Estupinian, Ginny
 17 Estupinian, and Mutual Vision knowingly made, participated in the making of, or ratified false
 18 and fraudulent statements of material fact and/or misleadingly failed to disclose material facts to
 19 Vesta Strategies.

20 112. Robert Estupinian, Ginny Estupinian, and Mutual Vision intended for Vesta
 21 Strategies to rely on its misrepresentations and misleading omissions. Vesta Strategies was
 22 deceived by these defendants' misrepresentations and reasonably relied upon the
 23 misrepresentations and fraudulent omissions. Indeed, Vesta Strategies would not have authorized
 24 the improper misappropriation of its money if it had known the truth. Nor would Vesta Strategies
 25 have continued to allow Robert Estupinian to be the CEO of Vesta Strategies, Ginny Estupinian
 26 to be an alleged employee of Vesta Strategies, or Mutual Vision to be Vesta Strategies' minority
 27 member. Because Vesta Strategies would not have acted the way it did had it known the true
 28

1 facts, the misrepresentations and fraudulent omissions of Robert Estupinian, Ginny Estupinian,
2 and Mutual Vision were material.

3 113. Vesta Strategies suffered substantial damages as a direct and proximate result of
4 its reliance on the false statements and fraudulent omissions of Robert Estupinian, Ginny
5 Estupinian, and Mutual Vision, including but not limited to, the loss of millions of dollars that
6 was obtained by these defendants and their friends and family through false pretenses.

7 114. Robert Estupinian, Ginny Estupinian, and Mutual Vision conducted themselves in
8 an outrageous manner by engaging in grossly deceptive business practices with reckless
9 indifference to Vesta Strategies' rights.

WHEREFORE, Vesta Strategies respectfully requests that this Court enter judgment on Count VI in its favor and against Robert Estupinian, Ginny Estupinian, and Mutual Vision, and award Vesta Strategies the following relief:

COUNT VII – CIVIL CONSPIRACY
Against Robert Estupinian, Ginny Estupinian,
Mutual Vision, Millennium, Tognazzini, Vesta Reverse, and Vesta Capital

20 115. Vesta Strategies incorporates the allegations of paragraphs 1 through 114 above as
21 if fully set forth in this paragraph.

22 116. Robert Estupinian, Ginny Estupinian, Mutual Vision, Millennium, Tognazzini,
23 Vesta Reverse, and Vesta Capital agreed to participate in a venture that would wrongfully
24 misappropriate funds from Vesta Strategies.

25 117. Pursuant to their agreement, these defendants intentionally acted in concert to
26 breach their respective fiduciary and other legal duties to Vesta Strategies and to cause Vesta
27 Strategies injury. Robert Estupinian, Ginny Estupinian, and Mutual Vision all took affirmative
28 actions in furtherance of their agreement by, without limitation, withdrawing money from Vesta

1 Strategies for the benefit of Robert Estupinian, Ginny Estupinian, Mutual Vision, Millennium,
 2 Tognazzini, Vesta Reverse, and Vesta Capital.

3 118. Therefore, Robert Estupinian, Ginny Estupinian, Mutual Vision, Millennium,
 4 Tognazzini, Vesta Reverse, and Vesta Capital conspired to tortiously misappropriate Vesta
 5 Strategies' money and use it for their own purposes

6 119. Accordingly, these defendants are jointly liable as conspirators for any tortious
 7 conduct committed in furtherance of their conspiracy.

8 120. The tortious conduct of these defendants, committed in furtherance of their
 9 conspiracy, directly and proximately caused substantial damages to Vesta Strategies.

10 WHEREFORE, Vesta Strategies respectfully requests that this Court enter judgment on
 11 Count VII in their favor and against Robert Estupinian, Ginny Estupinian, Mutual Vision,
 12 Millennium, Tognazzini, Vesta Reverse, and Vesta Capital and award Vesta Strategies the
 13 following relief:

- 14 (1) money damages in the amount proximately caused by the conspirators;
- 15 (2) punitive damages;
- 16 (3) reasonable attorneys' fees and costs; and
- 17 (4) such further or different relief as this Court deems appropriate.

18 **COUNT VIII – CONSTRUCTIVE TRUST**
 19 Against All Defendants

20 121. Vesta Strategies incorporates the allegations of paragraphs 1 through 120 above as
 21 if fully set forth in this paragraph.

22 122. As alleged above, each of the defendants wrongfully acquired or obtained money
 23 from Vesta Strategies under circumstances in which, in equity and good conscience, they should
 24 not be allowed to keep. Each of the defendants still has Vesta Strategies' money and they are not
 25 entitled to it.

26 123. Vesta Strategies has a right to its money and any property purchased with its
 27 money. Vesta Strategies' right to its money is superior to the right of any defendant.

1 124. A constructive trust should be entered to convey the value of the money that each
 2 defendant wrongfully received because it rightly and justly belongs to Vesta Strategies, and each
 3 of the defendants only gained the use of Vesta Strategies' money through theft, abuse of fiduciary
 4 duties, and fraud.

5 WHEREFORE, Vesta Strategies respectfully request that this Court enter judgment on
 6 Count VIII in its favor and against all of the defendants, and award Vesta Strategies the following
 7 relief:

- 8 (1) impose a constructive trust on all monies held by each defendant that
 rightfully belongs to Vesta Strategies;
- 9 (2) reasonable attorneys' fees and costs; and
- 10 (3) such further or different relief as this Court deems appropriate.

11 **COUNT IX – UNJUST ENRICHMENT**
 12 Against All Defendants

13 125. Vesta Strategies incorporates the allegations of paragraphs 1 through 124 above as
 14 if fully set forth in this paragraph.

15 126. As alleged above, each of the defendants received a benefit from the monies taken
 16 from Vesta Strategies. Each defendant has retained that benefit and was therefore unjustly
 17 enriched at the direct expense of Vesta Strategies.

18 127. It would be unjust for each of the defendants to retain that benefit at the expense of
 19 Vesta Strategies.

20 WHEREFORE, Vesta Strategies respectfully requests that this Court enter judgment on
 21 Count IX its favor and against all of the defendants, and award Vesta Strategies the following
 22 relief:

- 23 (1) money damages in the amount that each defendant was unjustly enriched at
 the expense of Vesta Strategies;
- 24 (2) punitive damages;
- 25 (3) reasonable attorneys' fees and costs; and
- 26 (4) such further or different relief as this Court deems appropriate.

COUNT X – ACCOUNTING Against All Defendants

128. Vesta Strategies incorporates the allegations of paragraphs 1 through 127 above as if fully set forth in this paragraph.

129. As alleged above, defendants have stolen, misappropriated, and misused Vesta Strategies' money for years. Vesta Strategies has traced much of that money to Robert Estupinian, his wife, his parents, his friends, his business associates, and his personal companies. However, due to the defendants' numerous breaches of their fiduciary and other legal duties owed to Vesta Strategies, Vesta Strategies does not have complete information as to the extent, nature, causes, and beneficiaries of the monies taken from Vesta Strategies. Vesta Strategies is entitled to a full and complete accounting at the expense of the defendants to determine what exactly happened to Vesta Strategies' money and who exactly benefited (and in what amounts) from that theft.

WHEREFORE, Vesta Strategies respectfully requests that this Court enter judgment on Count X in its favor and against all of the defendants, and award Vesta Strategies the following relief:

- (1) money damages in an amount to make Vesta Strategies whole;;
- (2) a full and complete accounting at the defendants' expense;
- (3) reasonable attorneys' fees and costs; and
- (4) such further or different relief as this Court deems appropriate.

Dated: December 10, 2007

Respectfully submitted,

McDERMOTT WILL & EMERY LLP
DANIEL E. ALBERTI

By: _____ /s/ Daniel E. Alberti
Daniel E. Alberti

Attorneys for Plaintiff
VESTA STRATEGIES, LLC